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# DECLARATION OF TRUST TOWN OF NANTUCKET AFFORDABLE HOUSING TRUST

Declaration of Trust made as of this 8<sup>th</sup> day of February, 2010 by

Matt MacEachern, Chairman, Town of Nantucket Affordable Housing Trust Fund

Fernando Esteban, Vice Chair, Town of Nantucket Affordable Housing Trust Fund

Linda Williams, Nantucket Housing Authority representative to the Town of Nantucket Affordable Housing Trust Fund

Patty Roggeveen, Board of Selectmen, Town of Nantucket Affordable Housing Trust Fund

Allen Reinhard, Board of Selectmen, Town of Nantucket Affordable Housing Trust Fund

Rick Atherton, Board of Selectmen, Town of Nantucket Affordable Housing Trust Fund

Brian Chadwick, Board of Selectmen, Town of Nantucket Affordable Housing Trust Fund

Michael Kopko, Board of Selectmen, Town of Nantucket Affordable Housing Trust Fund

Whiting Willauer, Appointee, Town of Nantucket Affordable Housing Trust Fund

hereinafter called the Trustees, pursuant to the provisions of M.G.L. c. 44 Section 55C hereby acknowledge and agree for themselves and their successors in trust to hold the same together with such other property and funds as maybe added thereto, for the purposes hereof in trust nevertheless for the benefit of all of the inhabitants of the Town of Nantucket in the manner and under the terms and conditions set forth herein.

## 1. Name of Trust.

The trust shall be called the "Town of Nantucket Affordable Housing Trust Fund", herein referred to as the Trust.

## 2. Purpose.

The purpose of the Trust is to provide for the creation and presentation of affordable housing in the Town of Nantucket for the benefit of year-round low and moderate income households who would otherwise have difficulty, financial or otherwise, locating housing on Nantucket.

## 3. Tenure of Trustees.

There shall be a Board of Trustees consisting of nine Trustees who shall be appointed by the Board of Selectmen. Five of the Trustees shall be members of the Board of Selectmen. Only persons who are residents of the Town of Nantucket shall be eligible to hold the office of Trustee. The Chairman of Nantucket Housing Authority (NHA) or another member of the NHA designated by its Chairman shall be a member. The Board of Selectmen shall appoint three members from the public. The Board of Selectmen shall serve for their specific term of office. All other Trustees shall serve for a term of two years, except that one of the initial trustee appointments shall be for a term of one year. Trustees may be reappointed by the Board of Selectmen for succeeding terms, and there is no limit on the number of terms which a Trustee can serve. Any Trustee may resign by written instrument signed and acknowledged by such Trustee and duly filed with the Town Clerk. If a Trustee shall die, resign, or for any other reason cease to fulfill the duties of a Trustee hereunder before his/her term of office expires, a successor shall be appointed by the Board of Selectmen to fill the remainder of the term of such vacancy provided that said appointment and acceptance in writing by the newly appointed Trustee is filed with the Town Clerk. Upon the appointment of any Trustee and the filing of such appointment with the Town Clerk, the title to the Trust estate shall thereupon and without the necessity of any conveyance be vested in such succeeding Trustee jointly with the remaining Trustees. Reference to the Trustee shall mean the Trustee or Trustees for the time being hereunder. Trustees may be removed at any time for cause by a majority vote of the Board of Selectmen following a properly noticed public hearing. Cause shall include, but not be limited to, violation of any local, state or federal law; non-participation in business of the Trust; incapacity to perform the duties of a Trustee; acts of the Trustee, that in the opinion of the Board of Selectmen, are grossly negligent or detrimental to the Town of Nantucket or the Trust.

#### 4. Meetings of the Trust.

The Trust shall meet at least quarterly at such time and at such place as the Trustees shall determine. Notice of all meetings of the Trust shall be given in accordance with the provisions of the Open Meeting Law, G.L. Chapter 39, Sections 23A, 23B and 23C. A quorum at any meeting shall be a majority of the nine Trustees, which majority is qualified and present in person. Minutes of all meetings shall be recorded and filed with the Town Clerk in accordance with the provisions of the Open Meeting Law, M.G.L. Chapter 39, Sections 23A, 23B and 23C.

#### 5. Powers of Trustees.

The Powers of the Trust, shall be the following, except that: (a) any purchase, sale, lease, exchange, transfer or conveyance of any interest in real property is subject to a two-thirds (2/3rds) vote of the Trustees; (b) the Trustees may incur debt, borrow money, grant mortgages and pledge trust assets only in an amount not to exceed eighty percent (80%) of the total value of the Trust's assets; and (c) any debt incurred by the Trust shall not constitute a pledge of the



full faith and credit of the Town of Nantucket and all documents related to any debt shall contain a statement that the holder of any such debt shall have no recourse against the Town of Nantucket with an acknowledgement of said statement by the holder: (1) to accept and receive property, whether real or personal, by gift, grant, devise, or transfer from any person, firm, corporation or other public or private entity, including without limitation grants of funds or other property tendered to the trust in connection with provisions of any zoning ordinance or bylaw or any other ordinance or bylaw; (2) to purchase and retain real or personal property, including without restriction investments that yield a high rate of income or no income;

(3) to sell, lease, exchange, transfer or convey any personal, mixed or real property at public auction or by private contract for such consideration and on such terms as to credit or otherwise and to make such contracts and enter into such undertakings relative to trust property as the Trust deems advisable notwithstanding the length of any such lease or contract; (4) to execute, acknowledge and deliver deeds, assignments, transfers, pledges, leases, covenants, contracts, promissory notes, releases and other instruments sealed or unsealed, necessary, proper or incident to any transaction in which the Board of Trustees engages for the accomplishment of the purposes of the Trust; (5) to employ advisors and agents, such as accountants, appraisers and lawyers as the Trustees deem necessary;

(6) to pay reasonable compensation and expenses to all advisors and agents and to apportion such compensation between income and principal as the Trustees deem advisable; (7) to apportion receipts and charges between incomes and principal as the Trustees deem advisable, to amortize premiums and establish sinking funds for such purpose and to create reserves for depreciation, depletion or otherwise; (8) to participate in any reorganization, recapitalization, merger or similar transactions; and to give proxies or powers of attorney with or without power of substitution to vote any securities or certificates of interest and to consent to any contract, lease, mortgage, purchase or sale of property, by or between any

corporation and any other corporation or person; (9) to deposit any security with any protective reorganization committee and to delegate to such committee such powers and authority with relation thereto as the Trustees may deem proper and to pay out of Trust property, such portion of expenses and compensation of such committee as the Trust may deem

necessary and appropriate; (10) to carry property for accounting purposes other than acquisition date values; (11) to borrow money on such terms and conditions and from such sources as the Trust deems advisable, to mortgage and pledge trust assets as collateral;

(12) to make distributions or divisions of principal in kind; (13) to comprise, attribute, defend, enforce, release, settle or otherwise adjust claims in favor or against the Trust, including claims for taxes and to accept any property, either in total or partial satisfaction of any indebtedness or other obligation and subject to the provisions of the Act, to continue to hold the same for such period of time as the Trust may deem appropriate; (14) to manage or improve real property and to abandon any property which the Trustees determine not to be worth retaining;



(15) to hold all or part of the Trust property un-invested for such purposes and for such time as the Trustees may deem appropriate; and (16) to extend the time for payment of any obligation to the Trust.

**6. Funds Paid to the Trust.**

Notwithstanding any general or special law to the contrary, all monies paid to the Trust in accordance with any Town of Nantucket zoning by-law, exaction fee, or private contribution shall be paid directly into the Trust and need not be appropriated or accepted and approved into the Trust. Funds appropriated by the Town of Nantucket Town Meeting for payment into the Trust become Trust property and these funds need not be further appropriated to be expended. All monies remaining in the Trust at the end of any fiscal year, whether or not expended by the Trust, remain Trust property. The Trust shall comply with any lawful conditions stipulated in the article's motion for monies appropriated by the Nantucket Town Meeting.

**7. Acts of Trustees.**

A majority of Trustees may exercise any or all of the powers of the Trustees hereunder, unless otherwise provided, and may execute on behalf of the Trustees any and all instruments with the same effect as though executed by all the Trustees. No Trustee shall be required to give bond. No license of court shall be required to confirm the validity of any transaction entered into by the Trustees with respect to the Trust Estate. Any expenditure by the trust to any one party in a cumulative amount exceeding \$100,000.00 or donations to any charitable organization by the Trust shall also be approved by the Board of Selectmen prior to finalizing the transaction.

**8. Liability:**

Neither the Trustees nor any agent or officer of the Trust shall have the authority to bind the Town of Nantucket, except in the manner specifically authorized herein. The Trust is a public employer and the Trustees are public employees for the purposes of M.G.L. Chapter 258. The Trust shall be deemed a municipal agency and the Trustees special municipal employees for the purposes of M.G.L. Chapter 268A.

**9. Taxes.**

The Trust is exempt from M.G.L. Chapter 59 and 62, and from any other provisions concerning payment of taxes based upon or measured by property or income imposed by the Commonwealth or any political subdivision thereof.

**10. Custodian of Funds.**

The Town of Nantucket Treasurer shall be the custodian of the funds of the Trust. The books and records of the Trust shall be audited annually by an independent auditor in accordance with accepted accounting practices for municipalities. Costs associated with the independent audit shall be born by the Trust. Furthermore, all funds paid to the Trust shall be deposited directly into a separate and distinct bank account under the Town Collector/Treasurer's custodianship. A



separate and distinct organizational code with a Chart of Accounts will be established on the Town's accounting system, and it will be the Trust's responsibility to maintain its financial records on the Town system. As the Trust will adopt an approved budget, the Trust must follow all warrant, accounts payables and policies and procedures.

**11. Governmental Body.**

The Trust is a governmental body for purposes of Sections 23A, 23B and 23C of M.G.L. Chapter 39.

**12. Board of the Town.**

The Trust is a Board of the Town for purposes of M.G.L. Chapter 30B and Section 15A of M.G.L. Chapter 40; but agreements and conveyances between the Trust and agencies, boards, commissions, authorities, departments and public instrumentalities of the town shall be exempt from said Chapter 30B.

**13. Duration of the Trust.**

This Trust shall be of indefinite duration until terminated by a vote of the Nantucket Town Meeting or upon establishment of the Community Housing Bank as provided for by Article 62 of this warrant whichever occurs sooner.. Upon termination of the Trust, subject to the payment of or making provisions for the payment of all obligations and liabilities of the Trust and the Trustees, the net assets of the Trust shall be transferred to the Town of Nantucket and held by the Board of Selectmen for affordable housing purposes. In making any such distribution, the Trustees may, subject to the approval of the Board of Selectmen, sell all or any portion of the Trust property and distribute the net proceeds thereof to the Town of Nantucket. The powers of the Trustees shall continue until the affairs of the Trust are concluded. Once the Nantucket Town Meeting has voted to terminate the Trust, all financial transactions made on behalf of the Trust shall be approved by the Board of Selectmen.

**14. Registry of Deeds.**

The Board of Selectmen may grant the Trustees any additional authority needed to execute, deliver and record with the Registry of Deeds any documents required for any conveyance authorized hereunder.

**15. Titles.**

The titles to the various Articles herein are for convenience only and are not to be considered part of said Articles nor shall they affect the meaning or the language of any such Article.

**16. Compensation of Trustees.**

Trustees shall not receive a salary, stipend, bonus or other means of compensation for their service as a Trustee, nor shall they be eligible for any benefits from the Town of Nantucket. Trustees may be compensated for reasonable out-of-pocket expenses for travel and other Trust-related expenses.

All such out-of-pocket expenses shall be fully documented with receipts for expenses prior to payment by the Trust.

**17. Amendments.**

The provisions of this Trust can only be amended by a vote of the Nantucket Town Meeting.

**18. Conflicts of Interest.**

The Trust shall be considered a public employer and the Trustees shall be subject to the conflict of interest provisions of M.G.L. Chapter 268A.

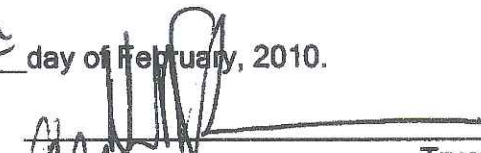
**19. Trustee Agreements.**

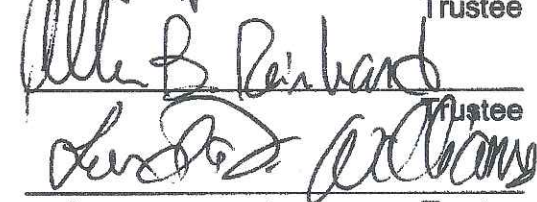
Trustees will be required to execute an agreement with the Trust at the time of their appointment by the Board of Selectmen outlining their roles and responsibilities in accordance with the provisions of this Trust. Such form of agreement shall be developed by the Board of Selectmen and approved as to form by the Nantucket Town Counsel.


**20. Annual Report.**

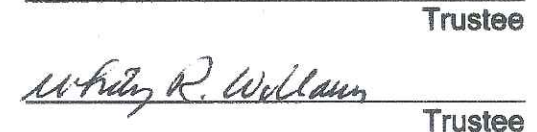
The Trustees shall prepare an annual report describing the activities of the Trust on a calendar year basis. The annual report shall be submitted to Nantucket Board of Selectmen by June 30th of the following year. The annual report shall list all financial transactions conducted by the Trust including all revenues and costs, provide a balance sheet of liabilities and assets of the Trust, list an inventory of all affordable housing units created, sold, and or managed by the Trust, and any other pertinent information related to the business of the Trust. Twenty hard copies and an electronic copy of the annual report shall be submitted to the Board of Selectmen.

Witness the execution under seal this 8<sup>th</sup> day of February, 2010.

  
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Trustee

  
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Trustee

  
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Trustee

  
\_\_\_\_\_  
Trustee



Pat Roger  
 Trustee  
Mary Jo  
 Trustee  
Rick O'Hertan  
 Trustee  
R. M.  
 Trustee

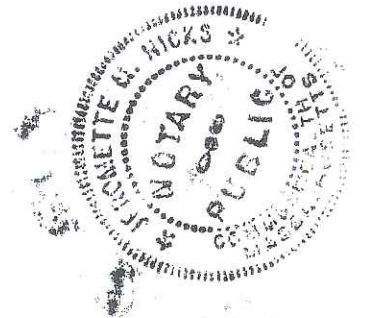
Commonwealth of Massachusetts

County of Nantucket, ss.

On this 8<sup>th</sup> day of February, 2010 before me, the undersigned Notary Public personally appeared MATT MACEACHERN, FERNANDO ESTEBAN LINDA WILLIAMS, PATTY ROGGEVEEN, ALLEN REINHARD, RICK O'HERTON, BRIAN CHADWICK, MICHAEL KOPKO, WHITING WILLAUE, Trustees, who proved to me through satisfactory evidence of identification, which was Massachusetts driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose as Trustee on behalf of the Town of Nantucket Affordable Housing Trust Fund.

Jeramette M. Hicks  
 JERAMETTE M. HICKS Notary Public

My Commission Expires: JAN. 11, 2013



Attest: Jennifer H. Ferreira, Register of Deeds  
 NANTUCKET COUNTY Received & Entered